

**GENERAL TERMS AND CONDITIONS FOR DISTRIBUTION OF COAL
TO MSME CONSUMERS OF WEST BENGAL AS
STATE NOMINATED AGENCY (SNA)**



**West Bengal Mineral Development and
Trading Corporation Ltd.
(WBMDTCL)**

Period: FY 2023-24 to 2027-28

BACKGROUND

1. According to the New Coal Distribution Policy (NCDP) issued by Ministry of Coal, Government of India, vide Office Memorandum No. 23011/4/2007-CPD dated 18.10.2007 and No. 23011/90/2013-CPD dated 27.09.2016, consumers in small and medium sector having annual requirement of coal upto 10,000MT and having no Fuel Supply Agreement (FSA) for coal supply with coal companies, can source their coal requirement from agencies nominated by State Governments. The Agency/ Association so nominated by the State Government are required to enter into a Fuel Supply Agreement with the coal company designated by CIL.

2. West Bengal Mineral Development & Trading Corporation Limited (WBMDTCL) has been nominated by the Government of West Bengal, vide Office Memorandum No. 392-CI/O/MINES POLICY/01/11/MINES (Pt-I) dated 16.06.2023 as State Nominated Agency (SNA) for the purpose of distribution of coal procured from Eastern Coalfields Limited (A subsidiary of Coal India Limited) to different coal consuming MSME units of the State of West Bengal for the period from 01.04.2023 to 31.03.2028.

3. The WBMDTCL has subsequently entered into a Fuel Supply Agreement dated 21.07.2023 with Eastern Coalfields Limited (ECL), a subsidiary of Coal India Limited (CIL).

4. WBMDTCL has launched a web portal and mobile application for end-to-end management and monitoring of the online coal distribution system under this scheme. Link to this portal has been given at the homepage of the website <https://mdtcl.wb.gov.in> of the WBMDTCL. The mobile application "SNA-Coal-WB" can be downloaded from Google Playstore.

5. The WBMDTCL has also requested all the District Magistrates of the State of West Bengal to assess the unit-wise requirement of coal of the MSME units of respective districts and recommend the names of the MSME units who are willing to procure coal under the scheme from WBMDTCL/ SNA.

6. Subsequently, the consumer In response to the above mentioned proposals the Consumers have applied to the WBMDTCL for allocation of coal in its favour for consumption in its/his own unit located in various districts within the State of West Bengal and the WBMDTCL has agreed to make such allocations on the terms and conditions set out hereafter.

Now, therefore, in consideration thereof the arrangement and covenants hereafter set forth and intending to be legally enforceable, the WBMDTCL and the Consumer (each individually a Party hereto and collectively the Parties) hereby covenant and agree as follows:

1. DEFINITIONS:

- a) **“Allocation Point”** shall mean any of the colliery sidings or colliery loading points, as the case may be, from where Coal shall be delivered by ECL in the Consumer’s container.
- b) **“Annual Contracted Quantity”** or **“ACQ”** shall have the meaning as ascribed to it in clause 4.1.
- c) **“Applicable Laws”** means all laws, brought into force and effect by the Government of India (“GoI”) or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to either WBMDTCL/WBMDTC or the Consumer, their obligations.
- d) **“Base Price”** shall mean in relation to Coal produced by ECL, the price at the pithead notified by CIL/ECL, from time to time.
- e) **“Business Day”** shall mean each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday (except 2nd and 4th Saturdays of a calendar month) that is not a declared holiday in the Corporate Head Office of WBMDTCL at Kolkata.
- f) **“Coal”** means non-coking as well as washery grade coal not linked to coking coal washeries, falling within the different classes, grades, and sizes into which Coal is categorized, from time to time, in the notification/order issued for such purpose by the Government of India or by CIL or ECL, as the case may be.

- g) **“Declared Grade”** means grade of the Coal to be allocated, as declared by CIL and/or ECL.
- h) **“Effective Date”** shall mean the date of submission of the Security Deposit by the Consumer.
- i) **“End User”** shall mean, any person/Unit having its MSME unit situated in the State of West Bengal and who requires upto 10,000 tonnes of Coal for its own use on an annual basis, and who does not have any Fuel Supply Agreement with CIL or its subsidiary Company.
- j) **“End Use Unit”** shall mean the name and the factory where the Coal is stated to be utilized by the consumer.
- k) **“Level of Lifting”** shall have the meaning as ascribed to it in Clause 5.
- l) **“Prime Lending Rate”** or **“PLR”** shall mean the prime lending rate of State Bank of India as applicable on the due date of payment by the Consumer.
- m) **“Policy”** shall mean the SNA Coal Distribution Policy of WBMDTCL.
- n) **“Quarter”** means the respective three-monthly periods, namely April to June, July to September, and so on.
- o) **“Run of Mine”** or **“ROM”** shall mean the coal as extracted from the colliery and which has not undergone any processing or resizing to suit the requirement of the user.
- p) **“Signature Date”** shall mean the date on which the consumer have accepted this General Terms & Conditions of the WBMDTCL.
- q) **“Service Charge”** shall mean the margin to be charged by the WBMDTCL in terms of clause 3.1 of NCDP, 2007 from the consumer over and above the price of the Coal Company on the booked quantity of Coal.
- r) **“State Government”** shall mean the Government of West Bengal.
- s) **“Truncated Year”** shall mean a truncated year by virtue of the Signature Date

occurring after April 1st in the case of first year of accepting the terms and conditions or otherwise truncated due to Force Majeure Acts etc.

- t) “**Year**” shall mean the financial year of the WBMDTCL, commencing on April 1st and ending on the following March 31st.

2. PERIOD OF COAL SUPPLY:

2.1 This Period of Coal Supply shall come into force from the Effective Date and unless terminated in accordance with the terms hereof, remain in force for a period **upto 31.03.2028**.

2.2 The Term of Coal Supply may be extended for a period not exceeding 12 months at a time upon mutual agreement by both the Parties.

3. SECURITY DEPOSIT

3.1 Amount and submission of Security Deposit

3.1.1 The Consumer shall deposit with the WBMDTCL, in the form of cash through NEFT/RTGS/Online payment, Security Deposit at a flat rate of Rs. 685/- per tonne of monthly quantity of coal recommended by the District Magistrate for the concerned MSME unit.

3.1.2 The Consumer shall not be entitled to claim any interest on the Security Deposit. It is clarified that the Base Price of Grade *G-4 STEAM* Coal of the WBMDTCL has been considered only for the purpose of calculating the amount of Security Deposit and no commitment whatsoever shall be inferred thereby to supply such grade of Coal at the said Base Price or otherwise.

3.2 It is the responsibility of the consumer to keep the Security Deposit valid and operative until full and final reconciliation of accounts between ECL, WBMDTCL and the consumer. In the event extension of term in accordance with Clause 2.2, the Consumer shall extend the validity of the Security Deposit accordingly.

- 3.3 The value of the Security Deposit shall be suitably increased / decreased to match the changes in the Base Price of Coal, as notified by CIL / ECL, or on the basis of the demand and availability factors as determined by the WBMDTCL from time to time. In the event of failure of the Consumer to deposit such increased value, the WBMDTCL shall have the right to suspend the supplies.
- 3.4 The Security Deposit submitted by the MSME Consumers based upon the previous agreement shall be utilized as Security Deposit for the current period. The Security Deposit shall be refundable to the Consumers at the end of its validity subject to successful completion of, and complete settlement of the claims of WBMDTCL. However no interest would be payable on the Security Deposit in any event.
- 3.4.1 WBMDTCL shall have the right to adjust or settle the amount of loss/claims caused, and any expenses incurred by the WBMDTCL due to the act of omission and commission or negligence of the Consumer and such amount shall be deducted from security deposit.
- 3.4.2 In case it is found that the Consumer is misusing or re-selling or trading the coal allotted or using it at some other place instead of his registered MSME unit, then the entire Security Deposit shall be forfeited, the Consumer shall be blacklisted and the supply of coal would be suspended with immediate effect. In such an event, WBMDTCL will have full liberty to take other/ further actions against the consumer as per law.
- 3.5 It is the responsibility of the Consumer to replenish the Security Deposit within 7 (seven) days of its appropriation by the WBMDTCL in accordance with the provisions of this T&C. In case of failure of the Consumer to replenish Security Deposit, WBMDTCL will have full right to suspend its coal allocation to the Consumer without absolving the Consumer of its obligations under this T&C.
- 3.6 In the event of termination of supply of Coal by the WBMDTCL in accordance with Clause 16.1(a) to (d) of the Terms and Conditions for supply of Coal, the WBMDTCL shall be entitled to forfeit the Security Deposit of the Consumer in addition to any other rights vested with the WBMDTCL upon such termination. Delay in payment for replenishment of Security Deposit may be accepted with interest@1% per calendar month or part thereof.

4. QUANTITY:

4.1 Annual Contracted Quantity (ACQ), Monthly Offered Quantity (MOQ), Monthly Booked Quantity (MBQ) and Annual Booked Quantity (ABQ):

- 4.1.1 The **Annual Contract Quantity (ACQ)** will be the quantity of coal in tonne recommended by the District Authorities for the end-use plant of the Consumer. It is the maximum quantity that the WBMDTCL shall allocate to the Consumer and the Consumer can lift in a year. However, the WBMDTCL does not guarantee the offer 100% (One Hundred per cent) of the ACQ to the Consumer since the actual offer is dependent upon the allocation received by the WBMDTCL from ECL against its FSA with the Coal Company and the aggregate ACQ of all the valid Consumers registered with the WBMDTCL for the year.
- 4.1.2 WBMDTCL shall have the right to offer quantities of coal less than the ACQ to the consumer since the allocation from the coal company (ECL) to the WBMDTCL may be less than the aggregate ACQs of all valid consumers registered with the WBMDTCL. Also, the WBMDTCL shall have the right to offer coal pro-rata basis as per the allocation received from the coal company (ECL). In such event the consumer shall not claim any compensation or damages from the WBMDTCL for such short offer.
- 4.1.3. If any complaint is received against the consumer with regard to violation of the Terms and Conditions, WBMDTCL will itself or otherwise verify the facts, documents and may also carry out physical verification of the unit and if the complaint is found true, WBMDTCL may reduce the ACQ or cancel the FSA, forfeit the security deposit and blacklist the Consumer and take other/ further steps as per law. Decision of WBMDTCL shall be final and binding upon the consumer.
- 4.1.4. The consumer shall indemnify the WBMDTCL by executing a separate bond that the coal shall be utilised at the registered end use MSME unit only for which the coal has been procured by the Consumer under this scheme and the coal will not be sold, traded or otherwise mis-utilized.

Consumer unit/ purchaser shall have no right to claim any specific grade or specific quantity of coal and the grade and the quantity of coal as may be received by WBMDTCL from the Coal Company and offered to the Consumer, shall be accepted by the Consumer

4.1.5. The Consumer has to submit an Affidavit undertaking that the coal procured under the scheme will be utilized as per the stipulations under Clause 4.1.4 of this Terms and Conditions. In the event of any breach or any complaint from any quarter received by WBMDTCL, Coal Company or Government, the same shall be subject to examination and suitable action shall be taken. The Consumer is liable for any act of their Authorized Signatory, Power of Attorney Holders, assignee, agents or anyone acting on their behalf.

4.1.6 The **Monthly Offered Quantity (MOQ)** is the quantity actually offered by WBMDTCL to the Consumer in a month on the basis of prorated distribution of the monthly allocation received by the WBMDTCL from the Coal Company (ECL) as below;

MOQ = [Allocation received by WBMDTCL from ECL for the month X ACQ*of the consumer] ÷ [Aggregate ACQs of all the MSME consumers who are registered with WBMDTCL and eligible to procure coal under the scheme on the date of allocation for the month]

**[As given in 4.1.1]*

4.1.7 The **Annual Offered Quantity (AOQ)** is the sum total of the MOQs of the year plus the Deemed Offer Quantity (DOQ) as defined in clause – 6 below.

4.1.8 The **Monthly Booked Quantity (MBQ)** is the quantity of coal booked by the consumer through advance payment of the price of coal against the MOQ for the month.

4.1.9 The **Annual Booked Quantity (ABQ)** is the sum total of all the MBQ of the year.

4.2 The ACQ may be revised and reset by the WBMDTCL on yearly basis taking into account the coal quantities lifted by the Consumer in the immediately preceding

Year or in the event of any revision made by ECL/CIL in the ACQ of the Fuel Supply Agreement made by the WBMDTCL with the Coal Company.

4.3 Coal lifted under this Arrangement shall only be used by the Consumer in its End Use unit. Further, the Consumer shall pay to the WBMDTCL the “Declared price of Coal” plus 5% margin over Base Price on the Monthly Booked Quantity (MBQ) as service charges. The Consumer shall also pay all taxes, levies and any other statutory dues as may be applicable. The Consumer shall ensure that the Coal is not re-sold or traded.

4.4 The Consumer shall submit coal utilization on monthly basis in the online portal in the prescribed format within 10th day of the next month failing to which monthly allotments to the unit will be suspended by WBMDTCL for upto next Three (3) months.

4.5 **Compensation for short supply/lifting**

If for a year, the Level of Lifting (Clause -5) by the Consumer falls below 100% of AOQ with respect to that Year, the Consumer shall be liable to pay compensation (Short Lifting Compensation) to WBMDTCL for the shortfall quantity as per the following calculation:

Sl. No.	Level of Lifting of Coal in a Year as per clause 5 of the Agreement	Rate of compensation for the Shortfall Quantity (at the rate of Base Price of Grade ‘G-5’ STEAM Coal of ECL as prevailing on the last day of the Financial Year)
1	Less than 100% but upto 50%	NIL
2	Below 50%	5%

4.7 The Short Lifting Compensation shall be payable by the Consumer to the WBMDTCL within a period of 30 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting Consumer shall be liable to pay interest in accordance with Clause 13. However, in the event of non-payment of Short Lifting

Compensation by the Consumer beyond 60 days of such claim, the WBMDTCL shall be entitled to take any or all remedies including but not limited to encashment of Security Deposit, adjustment against the Coal value lying with WBMDTCL and/or termination/stoppage of coal supply.

4.8 However, the Short Lifting Compensation will be claimed by the WBMDTCL only if the said Compensation becomes payable by the WBMDTCL to M/s Eastern Coalfield Limited (ECL) in terms of the Fuel Supply Agreement (FSA) between WBMDTCL and ECL.

5. LEVEL OF LIFTING:

Level of Lifting:

Level of Lifting with respect to a Year shall be calculated in the form of percentage as per the following formula:

Level of Lifting (LL) = [(Quantity of coal in MT lifted by the Consumer during the year) x 100] ÷ (AOQ)

Where:

LL = Level of Lifting of Coal by the Consumer during the Year (in %)

AOQ shall have the same meaning as given in Clause 4.1.7.

6. DEEMED OFFER QUANTITY (DOQ):

The aggregate of the following items shall constitute the Deemed Offer Quantity (DOQ) with respect to a Year.

- i) The quantity of Coal not offered by the WBMDTCL owing to omission or failure on the part of Consumer to provide the Security Deposit or any part thereof in accordance with this clause 3.1.1.
- ii) The quantity of Coal not offered by the WBMDTCL owing to omission or failure on the part of Consumer to book value paid orders against the Monthly Offered Quantities as per Clause 4.1.2 and within the period mandated under clause 8.1.1.

iii) The quantity of Coal not offered by the WBMDTCL owing to Consumer's failure to renew the validity of the DM Recommendation, Pollution Clearance or any other document required to remain eligible for offer of coal by the WBMDTCL in terms of this Arrangement. However, in case of a Consumer whose end-use unit is seasonal in nature, this component may be excluded from calculation of the DOQ against submission of a valid document from the District or other Government Authorities stating that the said end-use unit is seasonal in nature and hence was not operational during the concerned period of the concerned year.

7. WEIGHMENT OF COAL:

The weight recorded at the weighbridge of the Coal Company (ECL) at the Delivery Point and as mentioned in the dispatch document issued by the coal company, shall be final and binding on both the Parties for all commercial purposes under this Arrangement.

8. METHOD OF BOOKING AND DELIVERY OF COAL:

8.1.1 As per the monthly coal offer from Coal Company (ECL), the coal will be distributed on Pro-Rata basis to all valid eligible consumers on the allotment date of the WBMDTCL. Recommendation from District Authority and other documents, which are received by the WBMDTCL at least 7 (seven) working days before the allotment date of WBMDTCL will be processed and considered for the coal allotment for that month. The consumers through their authorised signatories shall submit their final booking and the required coal value payment within the stipulated timelines notified by WBMDTCL. The Consumer shall deposit 100% advance payment in the manner provided in Clause 10, for the quantity booked by the Consumer for the Month.

WBMDTCL shall make necessary arrangement for booking the coal from Coal Company and shall obtain the Sale Orders based on the booking received from the consumers. After obtaining the Sale Orders from coal company WBMDTCL shall arrange to issue Delivery Order(s) (DO) to individual consumers within 7(seven) working days.

The Consumer shall arrange to place the required number/type of trucks to lift the Coal within the Validity Period of Delivery Orders.

8.1.2 The Consumer shall ensure lifting of Coal against sale order(s) /delivery order(s) of any month within the validity period of such sale order(s)/delivery order(s). The validity of the sale order/delivery order shall not be extended, except in some specific cases, to be recorded in writing, subject to approval of ECL.

After lifting coal from the colliery the consumer or the authorised representative shall mandatorily submit the lifting details in the online portal and shall also upload a clean visible soft copy of the challan issued by Coal Company (ECL). After approval of the lifting details by the WBMDTCL the consumer shall be able to download the invoice and eWaybill from the online portal.

The consumer or the authorised representative shall mandatorily submit the original invoices issued by Coal Company (ECL) at designated office of the WBMDTCL within the prescribed timelines as may be notified by WBMDTCL in the portal, failing which consumers monthly allotments will be suspended by WBMDTCL for next up to 6 months. The consumer should follow the related notifications/guidelines issued by WBMDTCL in this regard from time to time.

8.1.3 In the event of any quantity of Delivery Order remaining undelivered by the Coal Company or unlifted by the consumer, the Consumer shall be entitled to refund of the coal value of such quantity excluding WBMDTCL Service Charge. The refund will be paid to the Consumer after receipt of such refund from ECL. However, such refund would be made after reconciliation of accounts of the Consumer with the WBMDTCL.

8.1.4 In the event the Consumer fails to book any quantity of Coal for any month, such Coal quantity shall lapse and shall be treated as failed quantity. It is clarified that in no case shall the Consumer be allowed to book/lift such lapsed/failed quantity in any subsequent period.

9. TRANSFER OF TITLE OF GOODS:

Once supplies of Coal have been affected at the Delivery Point/Loading Point in

the Consumer's container, the property/title and risk of loss of Coal shall stand transferred to the Consumer. WBMDTCL shall in no way be responsible or liable for the security or safeguard of the coal transferred.

10. PRICE OF COAL:

- 10.1 The price of Coal delivered hereunder shall be the sum of Base Price, sizing charges, transportation charges upto the Delivery Point, rapid loading charges, statutory charges, levies, Service Charge of the WBMDTCL @ 5% of the Basic Price of the booked quantity of Coal and other charges, as applicable ("**As Delivered Price of Coal**"). The components of As Delivered Price of Coal shall be determined on the basis of notifications issued by CIL/ECL/statutory authority from time to time. Accordingly, in case of revision of any component of the As Delivered Price of Coal by the CIL/ECL/statutory authority, the Consumer shall be liable to pay the revised component of As Delivered Price of Coal and from the date the revised rates/criteria becomes or has become effective.
- 10.2 Royalties, Taxes, Duties, Cess, and such statutory levies payable to the State Government/Central Government or to any other statutory authority shall be borne by the Consumer on the basis of grade of Coal as declared by CIL/ECL/statutory authority, as applicable at the time of delivery.
- 10.3 In all cases, the entire freight charges, irrespective of the mode of transportation of the Coal supplied, shall be borne by the Consumer.
- 10.4 The price of coal and all other payments shall be made by the Consumer at the designated Bank Account of the WBMDTCL.

11. NOTICE:

In the event, either Party owing payment of any amount to the other Party defaults in making such payment, the Party not in default shall give a written notice to the Party in default and the matter shall thereafter be dealt with in accordance with Clause 12.

- 12.** The consumer shall ensure that after loading of coal into the transport vehicles from the specified collieries, all loaded vehicles shall go directly to the designated destination unit for delivery of coal, through the shortest available route without

any detour. In case any of the loaded vehicles is located outside or beyond such route WBMDTCL shall be free to take any or all of the following actions against the consumer:

- a) Forfeiture of my entire Security Deposit of the Consumer.
- b) Impose penalty upon the Consumer upto 100% of GST Liability and Coal Compensation Cess on the quantity of coal.
- c) Immediate cancellation of the Consumer's registration with WBMDTCL and permanent blacklisting of the MSME unit.
- d) Inform the police to initiate criminal proceeding against the Consumer.
- e) Any other penal action may be deemed fit by WBMDTC Ltd.

13. SUSPENSION OF COAL SUPPLY:

13.1 Notwithstanding other provisions of this Arrangement, when payment with respect to an invoice raised by the WBMDTCL is not made by the Consumer or Security Deposit is not submitted/ replenished, as the case may be, within the stipulated period including the period allowed for making payment with interest in accordance with this T&C, WBMDTCL shall have the right to:

- a) Adjust the outstanding dues against the interest-free Security Deposit as described in Clause-3
- b) Suspend allocation of Coal after giving a written notice to the Consumer providing a cure-period of not more than seven (7) business days. WBMDTCL shall be entitled to give such notice as soon as the aggregate of sums due from the Consumer, including the value of Coal to be supplied during the cure-period, is equal to or more than the subsisting values of security under(a) above.

13.2 During the period of suspension of supplies in terms of Clause 13.1, WBMDTCL shall be relieved of its obligations to allocate Coal. However, the obligations of the Consumer under this Arrangement shall fully remain in force.

13.3 In the event of suspension of allocation of Coal pursuant to this Clause, WBMDTCL shall have the right to continue the suspension as long as the interest-free Security

Deposit has not been fully replenished or replaced, as may be required and the Consumer is otherwise eligible to receive allocation of coal under the Policy.

13.4 The WBMDTCL shall resume the Coal allocation from the month next to the month of receipt of payment of the all outstanding dues of the Consumer with interest in the manner provided in Clause 13, along with full replenishment of the Security Deposit.

14. **INTEREST:**

With respect to default in making any payment due in terms of this Arrangement the Consumer shall be liable to pay interest @12% simple interest per annum on the total sum outstanding and for the number of days the payment has remained overdue. For removal of doubts, it is clarified that the WBMDTCL shall have the right to adjust or recover the interest due in terms of this Clause from the interest-free Security Deposit of the Consumer.

15. **Resolution of Disputes:**

In the event of any dispute or differences between the Consumer and WBMDTCL, such dispute or differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then, the unresolved dispute or difference shall be referred to the sole arbitrator for adjudication as per the Arbitration & Conciliation Act, 1996 and rules made thereunder from time to time. The sole Arbitrator shall be nominated by the Managing Director, West Bengal Mineral Development and Trading Corporation Limited. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the Managing Director, West Bengal Mineral Development and Trading Corporation Limited shall appoint another person to act as an arbitrator in accordance with terms of the arrangement and the persons appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

The venue of the arbitration proceeding shall be Kolkata, West Bengal.

16. **TERMINATION OF COAL SUPPLY:**

16.1 The Coal Supply may be terminated in the manner and subject to the conditions detailed herein below:

(a) Automatically, in the event the expiry/withdrawal/cancellation of validity of any of the documents required to be furnished by the Consumer at the time of registration with the WBMDTCL, which shall be deemed to be the default of the Consumer. However, liabilities of the Consumer that had already accrued on the effective date of such termination shall survive.

(b) LL obligations:

By WBMDTCL within 60 days of the end of the relevant Year, in the event that Level of Lifting (LL) by the Consumer as per clause 4.5 herein above, falls below 30% of AOQ for the concerned Year, and on providing at least thirty (30) days' prior written notice to the Consumer.

(c) By the WBMDTCL in the event of non-payment of compensation by the Consumer within 60 days the claim for compensation being made by WBMDTCL in accordance with clause 4.7 hereinabove.

(d) By WBMDTCL, on receipt of advice from the State Government.

(e) By either party by providing prior written notice for a period of 90 days, where any Party is rendered wholly or partially unable to perform its obligations under this Arrangement because of a Force Majeure Act, as described in Clause 17 below; and such inability to perform lasts for not less than a total of 90 days in any continuous period of 180 days. In such event, the termination shall take effect on expiry of the notice period of 90 days, and the Parties shall be absolved of all rights/obligations under this Arrangement, save those that had already accrued as on the effective date of termination.

16.2 Termination of this Arrangement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination. On termination of the Arrangement the concerned District Authority shall be duly informed by the Party terminating the Arrangement of such termination.

16.3 Notwithstanding the provisions of Clause 16.1 and 16.2 above, in the event of any material change in the Coal Distribution System of WBMDTCL due to any directive/ notification of the Government or of the Coal Company (ECL/CIL), at any time after acceptance of this T&C, the same shall be notified by the WBMDTCL to the Consumer.

In the event the WBMDTCL decides to terminate the coal supply, arising out of any such change, it shall notify the Consumer at-least 30 days in advance of such termination coming into effect and the WBMDTCL shall stand relieved of any obligation in this regard. For the avoidance of any doubt, WBMDTC/WBMDTCL shall bear no liability on account of such termination.

17. **FORCE MAJEURE:**

17.1 As used in this Arrangement, the expression “**Force Majeure**” or “**Force Majeure Act**” means any act, circumstance or even to a combination facts, circumstances and events which wholly or partially prevents or delays the performance of obligations of either party arising under this Arrangement (“Non-Performing Party”) when such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the Non-Performing Party, and provided that such act, circumstance or event is relatable to one or more of the following categories:

- a) Flood, inundation of mine, drought, lightening, cyclone, storm, Lockdown earthquake or geological disturbances, eruption of gases and such like natural occurrences;
- b) Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder;
- c) The enactment, promulgation, amendment, suspension or repeal of any Applicable Laws after the date hereof;
- d) Any delay or direction or order on the part of the Government of India or relevant State Government on denial or refusal to grant or renew, or any

- revocation, or modification of any required permit or mining lease or governmental approvals provided that such delay, modification, denial, refusal or revocation was not due to a cause attributable to the non-performing Party;
- e) Mine fires and inundation where either is caused due to natural causes despite normal precautions in accordance with extant mining practices in India, subsidence, eruption of gases and unforeseen geological disturbances;
 - f) War, riot, civil war, blockade, insurrection, acts of public enemies or civil disturbance;

Provided that a Force Majeure acts, circumstance or event shall not include economic hardship, equipment failure or breakdown other than as specifically set-forth above.

17.2 Burden of Proof:

In the event the Parties are unable to agreeing good faith that a Force Majeure Act has occurred; the Parties shall resolve the dispute in accordance with the provisions of this Arrangement. The burden of proof as to whether a Force Majeure Act has occurred shall be upon the Party claiming the occurrence or existence of such Force Majeure Act.

18. Effect of Force Majeure:

If either Party is wholly or partially unable to perform its obligations under this Arrangement because of a Force Majeure Act, then that the Non-Performing Party shall be excused from what ever performance is affected by the Force Majeure Act to the extent so affected, provided that:

- a) Within 5(five) Business Days after the occurrence of the inability to perform due to a Force Majeure Act, the Non-Performing Party provides a written notice to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every 7(seven) days, during the period of Force Majeure.
- b) The Non-Performing Party shall use all reasonable efforts to continue to perform

its obligations hereunder and to correct or cure as soon as possible the said Force Majeure Act.

- c) The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the said Force Majeure Act.
- d) The Non-Performing Party shall provide the other Party with prompt notice of the cessation of the said Force Majeure Act giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Arrangement without most promptitude.
- e) The non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure Act shall not be excused as a result of such subsequent Force Majeure Act.
- f) The occurrence of a Force Majeure Act shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of the Force Majeure Act or for partial performance hereunder during periods of Force Majeure.
- g) The Force Majeure Act shall not relieve either Party from its obligation to comply with Applicable Laws. The Non-Performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party.
- h) Quantity of Coal not allocated by the WBMDTCL, or not accepted by the Consumer due to the Force Majeure Act shall reduce the AAQ by the same amount.

19. SCHEDULES/ANNEXURES:

The Schedule detailed below shall form part of this Arrangement.

Schedule -I - Format for Affidavit (Clause- 4.1.5)

20. MISCELLANEOUS:

20.1 Amendment: This Arrangement cannot be amended or modified except by prior written consent of the Parties.

20.2 Severability and Renegotiation: In the event any part or provision of this

Arrangement becomes, for any reason, unenforceable or is declared invalid by a competent court of law or tribunal, the rest of this Arrangement shall remain in full force and effect as if the unenforceable or invalid portions had not been part of this Arrangement, and in such eventuality the Parties agree to negotiate with a view to amend or modify this Arrangement for achieving the original intent of the Parties.

- 20.3 **Governing Law:** This Arrangement, and the rights and obligations hereunder shall be interpreted, construed and governed the laws, regulations and rules in force in India.
- 20.4 **Entirety:** This Arrangement and the Schedules, and such documents attached or referred hereto are intended by the Parties as the final expression of their Agreement and are intended also as a complete and exclusive statement of the terms of their Agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the matters contained in this Arrangement are hereby abrogated and withdrawn.
- 20.5 **Counterpart:** This Arrangement may be executed in any number of counter parts and each counterpart shall have the same force and effect as the original instrument.
- 20.6 The head of the Marketing Division of the WBMDTCL or his representatives/nominated for the purpose shall be authorized to act for and on behalf of the WBMDTCL.
- 20.7 It shall be the responsibility of the Parties to ensure that any change in the address for service or in the particulars of the designated representative is notified to the other Party and all other concerned, before effecting a change and in any case within two Business Day so f such change.
- 20.8 All notices under this Arrangement shall be made in writing and shall be in English.
- 20.9. Unless otherwise specified, the notices to be sent by the WBMDTCL to Consumer or by Consumer to the WBMDTCL address.